

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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|------------------------------------------|---|----------------------------|
| MICHAEL JOSEPH RHINEHART, |) | No. C 11-0812 JSW (PR) |
| |) | |
| Plaintiff, |) | ORDER SCHEDULING |
| |) | DISPOSITIVE MOTIONS |
| v. |) | |
| |) | |
| MATTHEW CATE, Director of the |) | |
| California Department of Corrections and |) | |
| Rehabilitation; A. HEDGPETH, Warden; |) | |
| K. HARRINGTON, Warden, |) | |
| |) | |
| Defendants. |) | |

INTRODUCTION

Plaintiff, a California prisoner proceeding pro se, filed this rights action pursuant to 42 U.S.C. § 1983 against three prison officials. The Court now reviews the amended complaint pursuant to 28 U.S.C. § 1915A, and orders a schedule for dispositive motions.

STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b). Pro se pleadings must be liberally construed.

1 *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

2 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement
3 of the claim showing that the pleader is entitled to relief." "Specific facts are not
4 necessary; the statement need only "'give the defendant fair notice of what the . . . claim
5 is and the grounds upon which it rests.'" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200
6 (2007) (citations omitted). Although in order to state a claim a complaint "does not need
7 detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his
8 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic
9 recitation of the elements of a cause of action will not do. . . . Factual allegations must
10 be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v.*
11 *Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer
12 "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. Pro se
13 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,
14 699 (9th Cir. 1990).

15 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements:
16 (1) that a right secured by the Constitution or laws of the United States was violated, and
17 (2) that the alleged violation was committed by a person acting under the color of state
18 law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

19 ANALYSIS

20 In his amended complaint, plaintiff states two claims. His first claim is that
21 Defendant Harrington, the Warden of Kern Valley State Prison ("KVSP"), where
22 Plaintiff was formerly incarcerated, placed him on "lockdown" status on two occasions,
23 May 26, 2009, and May 27, 2010, because he is black. He alleges that he was transferred
24 to Salinas Valley State Prison ("SVSP") on July 8, 2010, where Defendant Hedgpeth, the
25 SVSP Warden, placed him on lockdown status because he is black.

26 In his second claim, plaintiff alleges that Defendant Harrington deprived him of
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any outdoor exercise at KVSP for approximately six weeks, between May 27, 2010, and July 8, 2010, while he was on lockdown status there. He also alleges that Defendant Hedgpeth similarly deprived him of any exercise at SVSP for approximately four months, between July 8, 2010, and November 11, 2010, while he continued in lockdown status. He further alleges that Defendant Cate, the Secretary of the California Department of Corrections and Rehabilitation, is responsible for the policy of depriving inmates of outdoor exercise for long periods of time.

When liberally construed, Plaintiff's allegations are sufficient to state cognizable claims against these Defendants for the violation of his rights under the Equal Protection Clause and the Eighth Amendment.

CONCLUSION

For the foregoing reasons, the Court orders as follows:

1. In order to expedite the resolution of this case, the Court orders as follows:

a. No later than **ninety (90) days** from the date this order is filed, Defendants shall either file a motion for summary judgment or other dispositive motion, or a notice to the Court that they are of the opinion that this matter cannot be resolved by dispositive motion. The motion shall be supported by adequate factual documentation and shall conform in all respects to Federal Rule of Civil Procedure 56.

Defendants are advised that summary judgment cannot be granted, nor qualified immunity found, if material facts are in dispute. If defendants are of the opinion that this case cannot be resolved by summary judgment, they shall so inform the Court prior to the date the summary judgment motion is due.

All papers filed with the Court shall be promptly served on the Plaintiff.

b. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the court and served upon defendants no later than thirty days from the date of service of the motion. Plaintiff must read the attached page headed "NOTICE -- WARNING,"

1 which is provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir.
2 1998) (en banc), and *Klinge v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

3 If defendants file an unenumerated motion to dismiss claiming that plaintiff failed
4 to exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a),
5 plaintiff should take note of the attached page headed "NOTICE -- WARNING
6 (EXHAUSTION)." See *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n. 4 (9th Cir. 2003)

7 c. Defendants shall file a reply brief no later than **fifteen (15) days** after
8 Plaintiff's opposition is filed.

9 d. The motion shall be deemed submitted as of the date the reply brief is
10 due. No hearing will be held on the motion unless the Court so orders at a later date.


11 2. Discovery may be taken in accordance with the Federal Rules of Civil
12 Procedure. No further Court order under Federal Rule of Civil Procedure 30(a)(2) or
13 Local Rule 16 is required before the parties may conduct discovery.

14 3. Extensions of time are not favored, though reasonable extensions will be
15 granted. Any motion for an extension of time must be filed no later than **five** days prior
16 to the deadline sought to be extended.

17 4. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the
18 Court informed of any change of address and must comply with the Court's orders in a
19 timely fashion. Failure to do so may result in the dismissal of this action for failure to
20 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

21 IT IS SO ORDERED.

22 DATED: October 26, 2011

23 
24 _____
JEFFREY S. WHITE
United States District Judge

NOTICE -- WARNING (SUMMARY JUDGMENT)

If defendants move for summary judgment, they are seeking to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact--that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in the defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.

NOTICE -- WARNING (EXHAUSTION)

If defendants file an unenumerated motion to dismiss for failure to exhaust, they are seeking to have your case dismissed. If the motion is granted it will end your case.

You have the right to present any evidence you may have which tends to show that you did exhaust your administrative remedies. Such evidence may be in the form of declarations (statements signed under penalty of perjury) or authenticated documents, that is, documents accompanied by a declaration showing where they came from and why they are authentic, or other sworn papers, such as answers to interrogatories or depositions.

If defendants file a motion to dismiss and it is granted, your case will be dismissed and there will be no trial.

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL JOSEPH RHINEHART,
Plaintiff,

Case Number: CV11-00812 JSW

CERTIFICATE OF SERVICE

v.

MATTHEW CATE et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 26, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Michael L. Rhinehart #:C39412
Salinas Valley State Prison
P.O. Box 1050
Soledad, CA 93960

Dated: October 26, 2011



Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk